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SUMMARY RECORD OF THE 1317th MEETING (CLOSED)

Held at Headquarters, New York,
on Thursday, 7 April 1994, at 3 p.m.

Chairman: Mr. ANDO

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N.B. This record is subject to correction. Participants wishing to submit corrections during the session of the Committee are asked to hand them, in typewritten form, to the Secretary of the Committee. A consolidated corrigendum of the summary records covering the closed meetings of the Committee will be issued shortly after the session.

The meeting was called to order at 3.25 p.m.

CONSIDERATION OF COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL TO THE COVENANT (continued)

Communication No. 520/1992 (CCPR/C/WG/50/DR/520/1992)

1. Mrs. HIGGINS, speaking as Chairman/Rapporteur of the Working Group on Communications, introduced the draft decision on admissibility of the communication from two Hungarian citizens residing in Switzerland. In 1984 the authors, a husband and wife, had been declared to be citizens staying abroad unlawfully because the husband had refused to resign from his post in an international agency and to return to Budapest; on that basis the Hungarian authorities had confiscated the authors' apartment, which had been assigned to them in their capacity as civil servants, as well as their family home, denying them compensation and subsequently auctioning off the property in November 1988. The authors' appeals had been rejected by the City Council of Budapest acting as an administrative court. Furthermore, the husband had been refused a certificate confirming his accrued rights to social security benefits, and between 1984 and 1989 both authors had had to endure numerous arbitrary interferences in their private and professional lives.

2. It should be noted that the Optional Protocol had entered into force for Hungary on 7 December 1988. In January 1990, with the change of government in that country, the authors had requested the newly appointed Minister of Justice to reopen their case, but the request had been denied. A similar request to a division of the Prime Minister's Office had resulted in an apology on behalf of the new Government, the return of the authors' passports and a promise of assistance with recovery of their property, although there had been no subsequent follow-up or compensation on the property issue. The Budapest Central District Court had dismissed a further petition to review the case without summoning any of the parties, stating that the authorities had acted lawfully in 1984. A subsequent appeal to the Court of Appeal had been denied, with the implication that leave to appeal to the Supreme Court was also denied.

3. The authors claimed to be victims of violations by Hungary of article 12 (2) and (3) because of the restrictions placed on their freedom of movement; of article 14 (1) because of the various fair trial issues involved; and of article 17 (1) because of unlawful interferences in their private and professional lives. Furthermore, on the critical issue of admissibility ratione temporis, the authors, while acknowledging that many of the events in their case had occurred prior to the date of the Optional Protocol's entry into force, noted that Hungary had ratified the Covenant on 23 March 1976 and contended that all measures for protection under article 2 (1) and (2) of the Covenant should have run from that date. The State party, on the other hand, considered the case inadmissible ratione temporis because the events giving rise to the complaint had occurred prior to 7 December 1988.

4. With regard to the issues before the Committee, the Working Group noted, in paragraph 6.2 of its draft decision, that the right to property was not protected by the Covenant, and thus the authors' allegations in that respect were inadmissible ratione materiae.

/...

(Mrs. Higgins)

5. On the issue of admissibility ratione temporis, the Committee in its past jurisprudence had held that it could not consider alleged violations occurring before the entry into force of the Optional Protocol for a State party unless those violations continued after that time (para. 6.4); a continuing violation was to be interpreted as an affirmation, after the entry into force of the Optional Protocol, by act or by clear implication, of the previous violations of the State party. Applying that test to the case under consideration, it was not possible to speak of such a continuing affirmation by the Hungarian authorities of the acts committed by the State party prior to 7 December 1988, since the authors' passports had been returned to them and all harassment had stopped.

6. She suggested deleting the last sentence in paragraph 6.5, referring to the issue of property rights, which were not germane. The only remaining issue was whether the lack of compensation for confiscated property had continuing effects. According to the Committee's jurisprudence, there was no autonomous right to compensation under the Covenant, and the Working Group had thus considered that the authors' claims were inadmissible ratione temporis.

7. Mr. POCAR said that, while he did not wish to draft an individual opinion, he did want to reiterate his disagreement with the position taken in paragraph 6.4 of the draft decision. He did agree that the last sentence of paragraph 6.5 should be deleted because of the reference to property, but believed that the issue of compensation for property (para. 6.6), dealing as it did in part with the family home and not merely with property acquired as a civil servant, might be an issue under article 17 of the Covenant and should therefore be retained.

8. Mr. MAVROMMATIS said that, while he agreed that the communication was inadmissible, he felt that the communications from former Communist countries were a class apart and that the Committee should consider whether, perhaps by way of an obiter dictum, it could urge that justice should be done in cases that were otherwise inadmissible ratione temporis.

9. The case under consideration was on the borderline between having and not having continuing effects. He felt that it was inadmissible because the authors' property had been acquired by virtue of the husband's civil service position. Had it been inherited property, he would have reserved his position.

10. Mr. WENNERGREN observed that paragraphs 6.1 to 6.6 did not deal at all with the right to a fair hearing under article 14 (1); he felt that the Committee should clearly specify that violations under article 14 (1) were also inadmissible ratione temporis, if indeed he was correct in his understanding that all the authors' lawsuits (para. 2.6) had been brought prior to 1988.

11. Mr. SCHMIDT (Centre for Human Rights) said that the authors had pursued all the remedies referred to in paragraphs 2.5 and 2.6 in 1990 or 1991 and thus after December 1988.

12. Mrs. HIGGINS suggested that any misapprehension might be avoided by including the specific dates at the beginning of paragraph 2.6.

13. Mr. EL-SHAFEI wondered whether enough consideration had been given to the potential violations of article 14, since the authors had not been permitted to attend court proceedings themselves.

14. Mrs. CHANET said that the ratione temporis criterion did not apply to the proceedings which had been brought by the authors in 1991. Noting the State party's complete silence as to how the case had been handled in its courts, she said that she perceived a number of potential violations of article 14 in the conduct of those 1991 proceedings as described by the authors (paras. 3.2 and 5.2): the secrecy of the proceedings, the denial of a hearing, the absence of a public judgement, and the denial of the right of appeal. She therefore thought the communication was admissible because of possible violations of article 14 (1).

15. Mrs. EVATT, supported by Mr. PRADO VALLEJO and Mrs. CHANET, said that she saw a distinction between the possible violation of article 17 (1) on the grounds of the unlawful interference described in paragraphs 3.3 and 6.5, which was a single act occurring at one time, and the possible violation of article 17 (2) on the grounds of the failure to provide protection of the law against interference, which could be seen as having a built-in continuing effect. Even if the distinction did not apply in the current case, it might be worth mentioning.

16. The CHAIRMAN, speaking in his personal capacity, said that the privacy of all Eastern European nationals had been affected in one way or another by the previous regimes and that if the principle of continuing effect under article 17 (2) was allowed in a broad sense, there would be no end to the claims that might be brought. A very clear connection must be established between the issue of continuing violation and the actions taken by a Government following the entry into force of the Optional Protocol.

17. Mr. SADI said that he found the phrase "autonomous right" in paragraph 6.6 unclear, and would prefer to say "separate" or "distinct" right.

18. Mrs. HIGGINS explained that the phrase "autonomous right to compensation" referred to compensation for a breach. Thus, if the Committee did not have competence with regard to the substantive breach, it could not adduce the failure to compensate as constituting in itself a violation.

19. She supported Mr. Pocar's suggestions regarding paragraphs 6.5 and 6.6, and proposed adding the phrase ", which might arise in relation to article 17," after the word "issue" in the first line of paragraph 6.6. In answer to Mrs. Evatt, she said that she herself interpreted article 17 (2) to mean that the protection of the law must be in respect of current interference with privacy; that did not apply in the case under consideration.

20. That left the issue raised by Mr. El-Shafei and Mrs. Chanet: was it potentially a violation of the Covenant if a court refused to hear a case relating to an earlier issue, and would the Committee have competence over the fact that a State party's court currently refused to provide a remedy for a violation that had occurred before the entry into force of the Optional Protocol? She would like to have the members' views on that issue.

21. Mr. EL-SHAFEI said that for him the issue had less to do with the Committee's competence to rule on a court's decision not to review a prior decision than it did with the Committee's determining admissibility, in view of the substantial arguments to support possible violations of the authors' rights under article 14 (1) and (3), which could be considered at a later stage on the merits.

22. Mrs. CHANET agreed that there seemed to be a possible violation of article 14 (1). The Committee should thus declare that it appeared from paragraphs 3.2 and 5.2 that the communication was admissible on those grounds. Since the Committee did not have enough information to rule on the merits, the possibility of admissibility should be left open.

23. Mr. WENNERGREN said that the authors claimed a violation of article 14 (1) because they had not received a fair and public hearing when requesting the new Government to reopen an earlier case which itself had not included fair and public hearings. However, the Covenant did not necessarily require an oral hearing, and apparently a written hearing had been given in the original 1984 case. He therefore saw no issue under article 14 (1), but believed that the Committee should say so in its decision.

24. Mr. SCHMIDT (Centre for Human Rights) said, in answer to a query by Mr. Ban, that the 1990-1991 court proceedings by the author concerned only restitution of property.

25. Mr. BAN said that in that case he found it perplexing that the Committee's jurisprudence should exclude property rights ratione materiae (para. 6.2) while the same issue of property should be considered germane under another article of the Covenant (para. 6.6).

26. Mrs. HIGGINS said she could see that if the Committee could resolve the admissibility problem, there might be a case on the merits. However, the problem of admissibility ratione temporis, which was considerable, remained. She wondered whether it might even be a violation of article 14 for a court simply to decline to deal with or provide a remedy for matters from a previous era and whether the Committee would have competence to deal with such a remedy. If the matter in respect of which the potential remedy was being sought dated from an era in which the Committee had not had competence, the Committee could not have competence over an allegation that the court should have given a hearing after 1990 in accordance with article 14 of the Covenant.

27. Mr. El-SHAFEI said that the lawsuit, the court and the legal system in the case remained the same; only the political system had changed. He therefore felt that the Committee was competent to take up the matter.

28. Mrs. CHANET said that the Committee needed to determine whether there were sufficient grounds to enable it to investigate a violation under article 14 (1) of the Covenant. Until 1991, the authors had not been represented by a lawyer and had not been able to participate in their hearings at all. The State party said nothing about whether the rights guaranteed in article 14 (1) had been ensured.

29. Mr. WENNERGREN observed that the rights provided for in article 14 (1) were procedural rights which existed independently of the subject-matter of a lawsuit. Thus, in the current case, it did not matter if the lawsuit was concerned with property or with matters that had occurred before 1988. What had happened in 1984, when the matter had been tried by the courts for the first time, was, ratione temporis, outside the Committee's competence. What had happened in 1990 and 1991 might be admissible under article 14 (1); however, since it involved an application to reopen a case, a public hearing might not be required under the Covenant, in which case the communication could be considered inadmissible.

30. Mr. POCAR said he agreed that article 14 (1) provided for an autonomous right which could apply to any field, whether it was included in the Covenant or not. In the current case, after the entry into force of the Optional Protocol for Hungary, the authors had asked the court to review a case that had been decided prior to that date. As the request for revision of the case was a civil suit, he would be inclined in principle to say that article 14 applied to it for the purposes of admissibility.

31. Mrs. HIGGINS said that she could agreed with Mrs. Chanet, Mr. El-Shafei and Mr. Pocar that an article 14 issue might be present; her problem was whether the Committee had competence ratione temporis to consider it. If the Committee was going to take the position that any cursory refusal by a former communist State to reopen matters that had occurred before the entry into force of the Optional Protocol for that State was, of itself, a post-Protocol matter, the Committee would potentially be accepting competence under article 14 for thousands of complaints from persons who were trying to re-open old cases. She was not convinced that, ratione temporis, the Committee could proceed in that manner.

32. Mr. POCAR said it was not clear whether the appeals referred to in the third sentence of paragraph 2.3 had been made before or after 7 December 1988. He therefore wondered whether the case which the authors wanted reopened had itself been adjudicated before or after the entry into force of the Optional Protocol for Hungary.

33. Mr. SCHMIDT (Centre for Human Rights) said that the appeals referred to in paragraph 2.3 had been filed in 1984 and 1985 - in other words prior to 7 December 1988. A considerable period of time had elapsed between the denial of compensation and the auctioning of the property. The reference to the auctioning off of the property could be moved to the end of the paragraph.

34. Mrs. CHANET noted that the auction had taken place in November 1988 and that the Optional Protocol had entered into force for Hungary in December 1988. She wondered whether the authors had made any appeals after the auction and whether they had really taken no action between November 1988 and January 1990.

35. Mr. AGUILAR said that he supported Mr. Schmidt's suggestion regarding paragraph 2.3: it should be made clear that compensation had been denied in 1984. He also believed that the decision in paragraph 8 accorded with the facts as presented.

36. Mrs. HIGGINS asked for confirmation that everything recounted in paragraphs 2.3 and 2.4 had occurred prior to the entry into force of the Optional Protocol for Hungary and that everything from paragraph 2.5 onwards had occurred after that date.

37. Mr. SCHMIDT (Centre for Human Rights) said that Mrs. Higgins' assumption was correct.

38. Mrs. HIGGINS said that there was one key issue which the Committee must decide: whether it wanted to say that any court in a formerly communist country of eastern Europe, in dealing with matters under the Optional Protocol, raised a potential issue in terms of the Committee's competence ratione temporis to refuse to open, with full hearings and all the article 14 rights, a review of events that had transpired prior to the entry into force of the Optional Protocol. The answer to that question was clear to her.

39. Mrs. CHANET said that the question was a political, rather than legal, one. The Committee was not concerned with particular geographical areas or with problems associated with political changes. Nor should it be concerned about being flooded with applications, since that was its function. The issue at hand was whether the authors had sufficient grounds for their complaint, regardless of the subject-matter of the case, whether or not they were entitled to a review, and - even if the case was unfounded - whether they had been accorded their rights under article 14.

40. Mr. EL-SHAFEI said that the questions raised by Mrs. Higgins could lead to difficulties in respect of general amnesty laws. He felt that article 14 (1) had been violated both before and after the Optional Protocol had entered into force in Hungary.

41. Mrs. HIGGINS insisted that no one had addressed her point. The problem was whether the Committee could assume competence ratione temporis with regard to the reopening or review of a case which predated the entry into force of the Optional Protocol, while stating that it had competence ratione temporis in respect of procedures that would necessarily take place after the entry into force of the Optional Protocol. That was a legal and not a political question.

42. Mr. POCAR said that the mere reopening of a case which had been adjudicated before the entry into force of Optional Protocol did not automatically confer competence on the Committee. He even doubted whether article 14 (1) applied to the simple reopening of a case which had already been adjudicated.

43. Mr. FRANCIS said he did not see how the Committee could, on juridical grounds, take issue with Mrs. Higgins. The case before it was regrettable, but the Committee would have to find other grounds to determine that the communication was admissible.

44. The CHAIRMAN said that each member of the Committee was free to append a separate opinion to the Committee's decision.

45. Mr. MAVROMMATIS recalled that he had been one of the first to draw attention to the broad and important charitable aspect of the communication and to urge the former communist countries to find ways and means of making amends

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to the individuals concerned. However, to try to make a ratione temporis case was unacceptable; the current case was a clear-cut article 14 case, and it was inadmissible.

46. Mr. AGUILAR maintained that there had been no violation of article 14 at the time the Optional Protocol had entered into force in Hungary, and the Committee could not take up possible violations that had occurred before that date.

47. Mrs. EVATT said that in so far as the case involved only attempts to reopen issues which had been dealt with earlier, she supported the draft decision.

48. Paragraph 6.6 did not exclude the possibility of continuing effects of a failure to provide compensation; article 17 (2) included the question of compensation as one of the legal protections that might be provided against attacks on privacy. It was potentially an autonomous right. That question would have to be taken up at a later stage; it was not very clear-cut in the current case.

49. Mrs. HIGGINS said it appeared that the majority of the Committee would support an amended version of the draft, to which Mrs. Chanet could append her views. Moreover, there was consensus subject to clarifying the dates in paragraph 2.6, striking out the second part of paragraph 6.5, and saying in paragraph 6.6 that the only remaining issue was whether, in relation to article 17, there were continued effects.

50. The CHAIRMAN said that he took it that the Committee wished to adopt the admissibility decision as amended.

51. It was so decided.

52. Mrs. CHANET said that she would append a separate opinion to the Committee's decision.

Communication No. 330/1988 (CCPR/C/WG/50/DR/330/1988)

53. Mrs. HIGGINS, speaking as Chairman/Rapporteur of the Working Group on Communications, said that the author was a Jamaican citizen sentenced to death for murder whose petition to the Judicial Committee of the Privy Council for special leave to appeal had been refused. The author alleged in paragraph 3.2 of the communication that the State party had violated article 7 of the Covenant by causing him to suffer constant stress and anxiety. In paragraph 3.3 he alleged a violation of article 9 (3) and (4) of the Covenant, as he had been detained for two and a half months before being brought before an examining magistrate. In paragraphs 3.5 to 3.11 he alleged several violations of article 14, (3) (b), (c), (d), (e) and (g) for several reasons: his attorney had not been present in court on the first day of the trial; the foreman of the jury had been prejudiced against him; he had not been given adequate time or facilities for the preparation of his defence; his appeal had been delayed for two and a half years; and his counsel had been unable to obtain copies of relevant depositions and transcripts. There was also an alleged contravention of article 10 (1) and (2) (a) on the grounds that the author had not been

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segregated from convicted persons at the police station and that he had been kept chained and had been hit in the face. In paragraph 3.12, he alleged violations of article 17 (1) and (2), contending that the prison warders had interfered with his correspondence.

54. The State party had contended that the communication was inadmissible because of non-exhaustion of domestic remedies. The Committee, however, had declared the communication admissible in so far as it appeared to raise issues under articles 6, 7, 9, (3) and (4), 10 and 14 of the Covenant.

55. Paragraphs 6.1 to 7.4 of the communication dealt with the State party's request for a review of inadmissibility on the grounds that the author could have sought redress for the alleged violations of his constitutional rights before the Supreme (Constitutional) Court of Jamaica. In the case of the alleged violation of article 9 (3) and (4), the author could have applied for a writ of habeas corpus. The State party contended that jury-related and court matters normally fell outside the scope of the Committee's competence. Concerning the author's claims under article 14 (3) (d), it had not been disclosed that the author or his counsel had complained to the trial judge or to the Court of Appeal that the time or facilities allowed for the preparation of his defence had been inadequate. Regarding the alleged denial of the right to be present in court, neither the author nor his counsel had indicated that the author wished to be present at the hearing of the appeal.

56. In paragraph 9.3, the Committee addressed the constitutionality of the Offences against the Person (Amendment) Act of 1992 which determined whether a case warranted a sentence of execution or not. On the basis of fresh information, it had decided that the issue should be dealt with locally. The Committee had also reversed its admissibility decision with regard to the alleged violation of article 7.

57. Concerning the examination of the merits, since the State party had not contested the author's claim that he had been detained for two and a half months before being brought before a judge and that he had had no legal representation during that time, the Committee had found a violation of article 9 (3) and (4). Furthermore, in the absence of a response from the State party regarding the allegations of bad treatment and the failure to segregate the author from convicted persons, the Committee found a violation of article 10 (1) and (2) (a). However, since the author's claim that he had been exposed to random brutality on death row had not been further substantiated, the Committee found no violation of article 10.

58. Concerning the issue of a fair trial, the failure by the author's representative to inform the trial judge that the author had not been cautioned could not be attributed to the State party. The Committee had therefore found no violation of article 14 (1). On a related issue, the determination of what constituted "adequate time" required an assessment of the individual circumstances of each case. As there had been no complaint to the trial judge about inadequate time or facilities for the preparation of the defence and the counsel's decision had been based on his professional judgement, the Committee had found no violation of article 14 (3) (b) and (e). The Committee had been

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unable to ascertain whether or not the delay in the filing of the supplementary grounds of appeal had been attributable to the author himself.

59. On the question of instruction prior to the case, the Committee had found that the Glenford Campbell Case should not be followed. In the current case, the author would not have been allowed, under the operation of the applicable common law rules, to raise issues on appeal that had not been raised previously by counsel in the course of the trial. Accordingly, the Committee had found no violation of article 14 (3) (b), (3) (d) and 5.

60. Concerning the dreadful psychological pressures exerted on the author and his allegation that he had been compelled to confess guilt, it was felt that the written depositions made and used during the preliminary hearing would be required. Moreover, due weight must be given to the author's allegations since the judicial authorities had failed to produce the documents requested by the author's counsel and the allegations had not been denied by the States party. The Committee had thus found a violation of article 14 (3) (g), juncto article 7. However, as the author had failed to further substantiate his claim that the prolonged stay and conditions of detention on death row constituted cruel, inhuman or degrading treatment, the Committee had not found a violation of article 7 in that regard.

61. The Committee had found that the imposition of a death sentence upon the conclusion of judicial proceedings in which the provisions of the Covenant had not been respected constituted a violation of article 6. Lastly, in accordance with a decision taken earlier in the session, the final sentence of paragraph 12 of the draft recommendations should be deleted.

62. Mr. BRUNI CELLI, referring to the last three sentences of paragraph 11.2, wondered how a death-row inmate could substantiate his allegations, especially since the State party had not denied them. Concerning the decision to delete the last sentence of paragraph 12, he had never agreed with the Committee's jurisprudence in that respect or with the contents of the general comment on article 7. The Committee should emphasize the fact that the wait on death row was cruel treatment, particularly since the Privy Council maintained otherwise.

63. Mr. MAVROMMATIS said that the penultimate sentence of paragraph 11.6 would be clearer if the word "normally" was inserted between the phrase "the author would not" and the phrase "have been allowed". The latter part of paragraph 11.7, dealing with the issue of transcripts, should be redrafted to reflect the actual situation in Jamaica.

64. Mrs. EVATT, referring to paragraphs 9.3 and 9.4, wondered what would eventually happen if the author's application for a reclassification was unsuccessful. The author's claim of random brutality, which the Working Group had rejected in paragraph 11.2, might perhaps be better expressed if precise details were provided and the text was redrafted. With regard to the author's claim that he had been inadequately represented by Counsel, she expressed concern that if many similar cases were going to come before the Committee in the future, then the fact that the lawyer had been privately retained was not necessarily a sufficient argument for rejecting such claim.

65. Mr. WENNERGREN, referring to the last sentence of paragraph 11.1, suggested that the words "as a result" should be replaced by the phrase "in the circumstances, it also considers that".

66. Mr. BAN said that paragraph 11.8 ought to indicate that the author had really substantiated his claim and that no objection had been raised by the State party in its observation. Given that it was not easy to describe the cruelty and the inhuman nature of a prolonged stay on death row, he would prefer that the finding of a violation of article 7 should be retained in that connection.

67. Mrs. CHANET, referring to paragraph 11.6, noted that in communication No. 248/1987, the Committee had held that the combined effect of the lawyer's failure to raise objections at the trial in respect of the confessional evidence allegedly obtained through maltreatment, the consequences of that failure on the conduct of the appeal and the lack of opportunity to instruct counsel for the appeal or for the author to defend himself in person had amounted to a denial of effective representation and thus non-compliance with the requirements of article 14 (3) (d) of the Covenant. In the current case, however, even if the Committee determined that the author had a right of appeal independent of counsel's opinion as to the merits of the appeal, the author would not have been allowed to raise issues on appeal that had not been previously raised by counsel in the course of the trial. Furthermore, the author would have been unable to so appeal not only under common law rules but also under the rules of continental law. She therefore supported paragraph 11.6 as currently drafted.

68. Mrs. HIGGINS proposed that the sentence "Accordingly, a delay of two months furthermore violates the requirement in article 9 (3)" should be inserted after the penultimate sentence of paragraph 11.1.

69. Referring to Mr. Ban's argument that the Committee should find a violation of article 7, she noted that in paragraph 11.2 the Committee proposed to give appropriate weight to that allegation under article 10 of the Covenant. As to whether detention on death row constituted a violation of article 7, she recalled the Committee's previous findings that the mere fact of being on death row did not in itself constitute a violation of article 7. Moreover, the author's claim that he had been exposed to random brutality on death row had not been substantiated. The penultimate sentence of paragraph 11.1 might thus be amended to read: "As to the author's claim that he has been exposed to random brutality on death row, the Committee notes that no further details have been offered on this claim".

70. To avoid making a distinction between common law and continental law in the penultimate sentence of paragraph 11.6 and to introduce the notion that appeals might be allowed in special circumstances, she proposed that the words "unless special circumstances could be shown" should be inserted after the word "allowed", with the remainder of the sentence deleted.

71. She supported Mr. Mavrommatis' proposal regarding the redrafting of the latter portion of paragraph 11.7 and suggested the following wording: "The Committee further observes that counsel has requested the State party on several occasions to make available to him the transcripts of the preliminary inquiry, including the depositions of witnesses, and that, finally, after several

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reminders, he was informed that the judicial authorities were unable to locate them. These allegations were not denied by the State party and therefore due weight must be given to the author's allegations."

72. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to adopt the draft views on communication No. 330/1988, as amended by Mrs. Higgins.

73. It was so decided.

CCPR/C/50/R.7

74. Mrs. HIGGINS drew attention to document CCPR/C/50/R.7, concerning a request from Canada for the Committee to explain its criteria for the adoption of requests under rule 86 of its rules of procedure. The Working Group, acting within its competence, had already determined that the communication which had prompted the request was admissible but wished to have the Committee's views on its proposed reply to the Government of Canada, namely, that:

> "The essential criterion is indeed the irreversibility of the consequences, in the sense of the inability of the author to secure his rights, should there later be a finding of a violation of the Covenant on the merits. Accordingly, the Committee would wish to learn from the Government of Canada whether, should there be a finding in favour of the author on the merits, his return to Canada, notwithstanding his deportation, would be ensured."

75. The Working Group had already determined that the international legal standard on interim measures was irreversibility in the sense of subsequent inability to secure rights on the merits, and therefore wished to know whether Canada would allow the author to return, should the Committee find in his favour on the merits.

76. Mr. HERNDL said he agreed with the Working Group's proposal. It was for the Committee to formulate applicable criteria, particularly in cases which had general implications, and the Committee was therefore justified in asking the Canadian Government how it intended to deal with the consequences of a finding in favour of the author.

77. Mr. EL-SHAFEI wondered whether the notion of irreversible consequences included human rights violations, such as torture.

78. Mr. MAVROMMATIS also endorsed the proposed text. Exceptions should be made, however, in cases where adequate compensation constituted an acceptable remedy.

79. Mrs. EVATT supported Mr. Mavrommatis' view that the Committee should provide for both rights and remedies. The purpose of interim measures was to prevent the commission of a violation of rights or the continuation of such violation. There were cases, however, in which the commission of a violation might of itself prevent the victim from pursuing remedies.

80. Mrs. CHANET agreed with Mr. Mavrommatis and Mrs. Evatt that the notion of compensation should be included. She was concerned, however, that the question put to the Canadian Government in the second part of the reply might suggest that the Committee could revise its finding, depending on the State party's response to the question. The text could perhaps be redrafted to make it clear that the criteria determined by the Committee were valid for all cases.

81. Mrs. HIGGINS, responding to Mr. El-Shafei's question, said that if in a particular case there was danger of the author being tortured, the Committee would be free to issue a ruling under rule 86 of its rules of procedure.

82. She was unclear as to the exact import of the suggestions made by Mr. Mavrommatis and Mrs. Evatt on the subject of remedies, since the whole point of interim measures was to secure the rights of victims and not to provide remedies.

83. With regard to Mrs. Chanet's suggestion to redraft the last part of the draft reply, it was important for the Committee to know whether Canada would allow the author's return, should there be a finding in his favour.

84. Mrs. EVATT said that her concern was not covered by the notion of irreversibility, since the very violation of rights might preclude a victim from pursuing remedies. While she would not insist on her point, she hoped that the Committee would take it into account when considering future questions under rule 86.

85. Mr. MAVROMMATIS said that the provision for compensation would be useful in such cases as pre-trial detention, since there could be no certainty as to whether a State party had violated the Covenant. Prima facie evidence of such a violation was necessary. He therefore wished to propose the inclusion of words along the lines of "The Committee may decide not to issue a ruling on criterion where it considers that compensation would be an adequate remedy".

86. Mr. PRADO VALLEJO said he failed to see how the idea of compensation could be covered under a rule 86 finding.

87. Mrs. CHANET suggested that the reply might be broken down into two paragraphs, the first dealing with the criteria of irreversibility and the second containing a specific request to the Government of Canada for information.

88. Mrs. HIGGINS said that she had been persuaded by the arguments of Mr. Mavrommatis, since it was conceivable that compensation might be justified in some cases even though irreparable damage had not been done. Mr. Mavrommatis' proposal might therefore be drafted as follows, "The Committee may decide, in any given case, not to issue a request under rule 86, where it believes that compensation would be an adequate remedy". Mrs. Chanet's proposals could likewise be reflected by inserting new text after the first sentence, to read:

(Mrs. Higgins)

"Applying these criteria to deportation, it would be necessary for the Committee to know whether the author would be able to return should there be a finding in his favour on the merits.

"Accordingly, the Committee wishes to inquire whether Canada is prepared to give this assurance in the present case".

89. Mr. HERNDL said that he disagreed with the inclusion of the notion of compensation. The Committee should give a specific reply to the specific question of essential criteria posed by the State party. He would not, however, wish to break the consensus which the Committee appeared to have reached.

90. Mr. MAVROMMATIS said that he would agree to the deletion of the reference to compensation if the reply was specific and did not suggest a general approach to the issues raised under rule 86.

91. Mrs. HIGGINS noted that the Working Group had brought the matter to the attention of the Committee precisely because it had general implications.

92. The CHAIRMAN said that, if he heard no objection, he would take it the Committee wished to approve the draft reply of the Working Group, as amended.

93. It was so decided.

The meeting rose at 6.15 p.m.